

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

FOR FURTHER INFORMATION CONTACT: James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

Prerule Stage:

No prerule rulemakings.

Proposed Rule Stage:

Quality Control Standards for Automated Valuation Models (3064-AE68)

The FRB, OCC, FDIC, NCUA, FHFA, and CFPB are developing a rule to implement section 1473 of the Dodd-Frank Act concerning quality control standards for automated valuation models.

Uniform Rules of Practice and Procedure (3064-AF10)

The OCC, Board, FDIC, and NCUA will seek comment on amendments to the Uniform Rules of Practice and Procedure applicable to adjudicatory proceedings before the Office of Financial Institution Adjudication. The existing regulations have not been updated in nearly 25 years. The goal of the rulemaking is to update the regulations to conform with current practice and technology. The FDIC also seeks comments on revisions and additions to its General Rules of Procedure, which will update and modernize administrative proceedings rules related to discovery practices and disclosure of expert witness testimony.

FDIC Official Sign and Advertising Statement Requirements (3064-AF26)

The FDIC is issuing proposed amendments to its regulation on Advertisement of Membership to align its policies and keep pace with how today's banks offer products/accept deposits and how consumers connect with banks, including through evolving channels.

Simplification of Deposit Insurance Rules (3064-AF27)

The FDIC plans to seek comment on proposed amendments to its regulations governing deposit insurance. These changes are intended to assist bankers and depositors in understanding the deposit insurance rules.

Basel III Capital Rule Revisions (3064-AF29)

The OCC, FRB, and FDIC (collectively, the Agencies) are requesting comment on a proposal to comprehensively revise the Agencies' risk-based capital rules, including revisions to the current standardized and advanced approaches capital rules.

Procedures for Monitoring Bank Secrecy Act Compliance (3064-AF34)

The FDIC, FRB, OCC, and FinCEN plan to seek comment on a notice of proposed rulemaking to define an effective Bank Secrecy Act compliance program in the Procedures for Monitoring Bank Secrecy Act Compliance regulations.

Standardized Approach for Calculating the Exposure Amount of Derivative Contracts (3064-AF57)

The OCC, FRB, and FDIC are issuing this notice of proposed rulemaking to make corrections to certain provisions of the capital rule related to the standardized approach for counterparty credit risk, which is used for calculating the exposure amount of derivative contracts under the regulatory capital rule and was adopted in a final rule published on January 24, 2020.

Activities of Insured State Banks and Insured Savings Associations (RIN 3064-AF58)

The FDIC is seeking comment from interested parties regarding the FDIC's rules and regulations for activities of insured State banks and insured savings associations.

Tax Allocation Agreements (3064-AF62)

The federal banking agencies intend to issue a notice of proposed rulemaking to amend their safety and soundness rules that would add an appendix to require the preservation of an insured depository institution (IDI)'s ownership in and timely receipt of tax refunds, and the equitable allocation of tax liability within a holding company structure. This appendix would incorporate the Agencies' outstanding statements of policy covering requirements under tax allocation agreements between an IDI and its holding company.

** False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo (3064-AF71)*

The FDIC is seeking comment on a proposed rule codifying a portion of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)(4)), which prohibits any person from misrepresenting the extent and manner of FDIC deposit insurance with respect to particular entities or to the industry generally. This subpart would apply to any person who: falsely represents or implies that any deposit liability, obligation, certificate, or

share is insured or guaranteed by the FDIC by use of the words making up the acronym FDIC or use of the FDIC logo or symbol; or who knowingly misrepresents that any deposit is insured by the FDIC or the extent to which, or the manner in which, any deposit is insured.

** Real Estate Lending Policies (3064-AF72)*

The FDIC is inviting comment on a proposed rule to amend the Code of Federal Regulations 12 CFR part 365, Appendix A to Subpart A, entitled Real Estate Lending Standards (RE Standards) in order to provide a consistent approach for calculating the ratio of loans in excess of the supervisory loan-to-value limits (LTV Ratios) at all FDIC-supervised depository institutions. The methodology in the proposed rule approximates the historical methodology the FDIC has followed for calculating these ratios without creating any regulatory burden. The proposed rule also avoids any regulatory burden that could arise if an FDIC-supervised depository institution subsequently decided to switch between different capital rules. In addition, the proposed rule would make conforming changes to the Community Bank Leverage Ratio rule.

** Limits on Extensions of Credit to Executive Officer, Directors, and Principal Shareholders of Insured Nonmember Banks (3064-AF74)*

In response to a proposed comprehensive revision of 12 CFR part 215, Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (Regulation O) by the FRB, the FDIC is issuing a counterpart notice of proposed rulemaking to amend 12 CFR 337.3 of FDIC Regulations, which implements insider lending restrictions with respect to state nonmember banks.

Final Rule Stage:

Removal of OTS Regulations Regarding Definitions for Regulations Affecting All State Savings Associations (3064-AF30)

The FDIC is issuing a final rule to rescind and remove 12 CFR part 390, subpart Q, entitled Definitions for Regulations Affecting All State Savings Associations. This subpart was included in the regulations that

were transferred to the FDIC from the OTS on July 21, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Act. Upon removal of 12 CFR part 390, subpart Q, the definitions for regulations affecting all state savings associations for which the FDIC has been designated the appropriate federal banking agency will be found at 12 CFR part 362, subpart C, entitled Activities of Insured State Savings Associations. The final rule will not change 12 CFR part 336, subpart C.

Removal of OTS Regulations Regarding Securities Offerings and Amendment of Statement of Policy on Use of Offering Circulars (3064-AF33)

FDIC is issuing a final rule to remove the OTS Regulations at part 390, subpart W, regarding securities offerings and the use of offering circulars

Exemptions to Suspicious Activity Report Requirements (3064-AF56)

The FDIC is issuing a final rule to modify the requirements for FDIC-supervised institutions to file Suspicious Activity Reports. The final rule amends the FDIC's Suspicious Activity Report regulations to allow the FDIC to issue exemptions from the requirements of those regulations. The final rule makes it possible for the FDIC to grant relief to FDIC-supervised institutions that develop innovative solutions to meet Bank Secrecy Act requirements more efficiently and effectively.

Computer-Security Incident Notification (3064-AF59)

The OCC, FRB, and FDIC are issuing a final rule that requires a banking organization to report significant computer-security incidents to its primary regulator on a timely basis.

** Temporary Asset Thresholds (3064-AF67)*

To mitigate temporary transition costs on banking organizations related to the coronavirus disease 2019 (COVID-19), the FDIC, FRB, and OCC (together, the Agencies) issued an interim final rule that permits regulated banks, bank holding companies, savings and loan holding companies, and U.S. branches and agencies of foreign banking organizations with under \$10 billion in total assets as of December 31, 2019, (community banking organizations) to use asset data as of December 31, 2019, in order to determine the

applicability of various regulatory asset thresholds during calendar years 2020 and 2021. The Agencies intend to adopt as final the interim final rule.

** Regulatory Capital Rule: Emergency Capital Investment Program (3064-AF73)*

OCC, FRB, and FDIC (together, the Agencies) are issuing an interim final rule that provides that preferred stock issued to Treasury under Emergency Capital Investment Program (ECIP) qualifies as additional tier 1 capital and that subordinated debt issued to Treasury under ECIP qualifies as tier 2 capital under the Agencies' capital rule in order to support and facilitate the timely implementation and acceptance of ECIP and promote its purpose. Section 104A of the Community Development Banking and Financial Institutions Act of 1994, which was added by the Consolidated Appropriations Act, 2021, authorizes the Secretary of the Treasury to establish the ECIP through which the Department of the Treasury (Treasury) can make capital investments in low- and moderate-income community financial institutions. The purpose of ECIP is to support the efforts of such financial institutions to, among other things, provide financial intermediary services for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities that have disproportionately suffered from the impacts of the COVID19 pandemic.

Completed Actions:

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements (3064-AE44)

The OCC, FRB, and the FDIC (together, the Agencies) jointly issued a final rule that implemented a stable funding requirement, the net stable funding ratio (NSFR), for large and internationally active banking organizations. The NSFR requirement is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, as well as to promote improvements in the measurement and management of liquidity risk. The rule also amended certain definitions in the liquidity coverage ratio rule that are also applicable to the NSFR. A bank holding company or savings and loan holding company subject to the proposed NSFR requirement or modified

NSFR requirement is required to publicly disclose the company's NSFR and the components of its NSFR each calendar quarter.

Regulatory Capital Treatment for Investments in Long-Term Debt Instruments (3064-AE79)

The OCC, FRB, and FDIC jointly issued a final rule on revisions to the regulatory capital rule requiring Advanced Approaches banking organizations to deduct certain total loss-absorbing capacity instruments from tier 2 capital, including any significant investments in covered debt instruments, a reciprocal cross-holding, or a direct, indirect, or synthetic investment in the banking organization's own covered debt instrument.

Brokered Deposits (3064-AE94)

The FDIC issued a final rule amending the FDIC's rule on brokered deposits.

Market Risk Rule-Fundamental Review of the Trading Book (3064-AF01)

This rulemaking was withdrawn when merged with RIN 3064-AF29.

Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized (3064-AF02)

The FDIC issued a final rule on interest rate restrictions that apply to less than well capitalized insured depository institutions.

Community Reinvestment Act Regulations (3064-AF22)

The FDIC and OCC invited and received comments on a proposal to modernize the Community Reinvestment Act regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities. To accomplish these goals, the proposed rule sought to strengthen the CRA regulation in four key areas by (1) Clarifying which activities qualify for CRA credit; (2) updating where activities count for CRA credit; (3) creating a more transparent and objective method for measuring CRA performance; and (4) providing for more transparent, consistent, and timely CRA-related data collection. This proposal was withdrawn.

Assessments; Large Bank Pricing (3064-AF24)

This rulemaking was withdrawn.

Collection of Civil Money Penalty Debt (3064-AF25)

The FDIC revised 12 CFR part 313 through a final rule to further implement the Debt Collection Improvement Act of 1996 (DICA), in relation to the collection of civil money penalty debt that is debt from either stipulated civil money penalties or final judgments on civil money penalties. The final rule improves the effectiveness of the FDIC's debt-collection efforts, primarily by allowing the FDIC to refer debts arising from its enforcement-related activities to the U.S. Department of the Treasury for collection.

Credit Risk Transfer for Consolidated Traditional Securitization (3064-AF28)

This rulemaking merged into RIN 3064-AF29.

Requirements for Certain Applications (3064-AF31)

The FDIC adopted a final rule that requires certain conditions and commitments in connection with FDIC determinations on certain filings and notices by, or in relation to, certain institutions.

Role of Supervisory Guidance (3064-AF32)

The FDIC, OCC, FRB, CFPB, and NCUA (the Agencies) jointly issued a final rule that codifies the Interagency Statement Clarifying the Role of Supervisory Guidance issued by the Agencies on September 11, 2018 (2018 Statement). The 2018 Statement reiterated well-established law by stating that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. As such, supervisory guidance does not create binding legal obligations for the public.

Removal of OTS Regulations Regarding Nondiscrimination Requirements (3064-AF35)

The FDIC issued a final rule that removed 12 CFR part 390, subpart G, entitled Nondiscrimination Requirements, and incorporated certain provisions of part 390, subpart G into existing FDIC

regulations. Subpart G was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 11, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Act.

Removal of Transferred OTS Regulations Regarding Application Processing Procedures of State Savings Associations and Conforming Amendments to Other Regulations (3064-AF36)

The FDIC issued a final rule that removed the OTS Regulation at 12 CFR part 390, subpart F, regarding application processing procedures. Subpart F was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 11, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Act.

Removal of Transferred OTS Regulations Regarding Certain Subordinate Organizations of State Savings Associations (3064-AF37)

The FDIC issued a final rule that rescinded and removed from the Code of Federal Regulations 12 CFR part 390, subpart O, entitled Subordinate Organizations. This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Act.

Removal of Transferred OTS Regulations Regarding Prompt Corrective Action Directives and Conforming Amendments to Other Regulations (3064-AF38)

The FDIC issued a final rule that eliminated the former OTS regulations related to Prompt Corrective Action Directives and Enforcement relating to State Savings Associations found at 12 CFR 390.456-459, subpart Y. The FDIC conformed the existing procedures under its own regulations to apply to state savings associations (12 CFR 308.321-204). The FDIC regulations and the former OTS regulations were significantly similar and were combined into the same procedural rules to avoid confusion.

Branch Application Procedures (3064-AF54)

The FDIC issued a final rule to: (1) Amend the FDIC's branch application filing procedures set forth in 12 CFR 303.42(b), 12 CFR 303.182, and 12 CFR 303.184 by deleting the requirements related to the National Historic Preservation Act of 1966 (NHPA) and/or the National Environmental Policy Act of 1969 (NEPA), and (2) rescind two related Statements of Policy regarding the NHPA and the NEPA.

** Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021 (3064-AF63)*

In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 and strains in U.S. financial markets, the FDIC issued an interim final rule that temporarily waived compliance with certain annual independent audit and reporting requirements for certain insured depository institutions with total consolidated assets of \$500 million or more that are required by part 363, which implements section 36 of the Federal Deposit Insurance Act.

** Assessments; Corrections (3064-AF64)*

The FDIC made technical corrections to its rules governing deposit insurance assessments in two places to conform the text that appears in 12 CFR 327 with the text that was adopted by the FDIC Board of Directors. Due to publishing errors, incorrect text was printed in the **Federal Register** and the *Code of Federal Regulations*. The technical corrections do not affect assessments previously paid by insured depository institutions (IDIs) or assessments paid by IDIs in the future. The first correction conforms the value of the weighted charge-off rate for loans secured by nonfarm nonresidential properties that appears in 12 CFR 327 with the charge-off rate adopted by the FDIC Board of Directors. The second correction conforms a footnote that defines two terms in the descriptions of two counterparty exposure measures used to calculate the deposit insurance assessments for highly complex institutions that appears in 12 CFR 327 with the footnotes adopted by the FDIC Board of Directors.

** Assessments, Amendments To Address the Temporary Deposit Insurance Assessment Effects of the Optional Regulatory Capital Transitions for Implementing the Current Expected Credit Losses Methodology (3064-AF65)*

The FDIC issued a rule to amend the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs, to address the temporary deposit insurance assessment effects resulting from certain optional transition provisions relating to the implementation of the current expected credit losses (CECL) methodology. The rule amended the assessment regulations to remove the double counting of a portion of CECL transitional amounts in certain financial measures that are used to determine assessment rates for large and highly complex IDIs. The rule also adjusted the calculation of the loss severity measure to remove the double counting of a portion of CECL transitional amounts for a large or highly complex IDI. This rule does not affect regulatory capital or the regulatory capital relief provided in the form of transition provisions that allow banking organizations to phase in the effects of CECL on their regulatory capital ratios.

** Regulatory Capital Rule: Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements; Correction (3064-AF66)*

The FDIC issued a final rule making a technical correction that aligns the applicability of the enhanced supplementary leverage ratio to its intended scope covering only global systemically important banking organizations and their subsidiaries. This final rule revised section 324.403(b)(1)(ii) to provide that an FDIC-supervised institution that is a subsidiary of a global systemically important bank holding company as defined in 12 CFR 217.402 will be considered well-capitalized for purposes of the PCA provisions of the capital rule if it satisfies certain capital requirements and has a supplementary leverage ratio of 6.0 percent or greater.

** Community Reinvestment Act Regulations (3064-AF68)*

FRB and FDIC amended their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define small bank or small savings association and intermediate small bank or intermediate small savings association. As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers.

** FDIC Rules of Practice and Procedure; Technical Revisions (3064-AF69)*

The FDIC amended its rules of practice and procedure to codify the agency's longstanding practice of having certain adjudicative functions performed by an inferior officer of the United States appointed by the FDIC's Board of Directors. Additionally, the FDIC is making other technical edits to its rules of practice and procedure to update references to certain positions within the FDIC Legal Division whose titles are outdated.

** Regulatory Capital Rule: Amendments to the Capital Rule for Large Banking Organizations (3064-AF70)*

This rulemaking was a duplicate of RIN 3064-AF29, and was withdrawn.

Long-Term Actions:

Incentive-Based Compensation Arrangements (3064-AD86)

The OCC, Board, FDIC, FHFA, NCUA, and SEC (the Agencies) previously sought comment on a joint proposed rule to revise the proposed rule the Agencies published in the **Federal Register** on April 14, 2011, and June 10, 2016, and to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 956 generally requires that the Agencies jointly issue regulations or guidelines: (1) Prohibiting incentive-based payment arrangements that the Agencies determine encourage inappropriate risks by certain financial institutions by providing excessive compensation or that could lead to material financial loss; and (2) requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator.

Source of Strength (3064-AE61)

The OCC, FRB, and FDIC (the appropriate Federal banking agencies) are developing a joint Notice of Proposed Rulemaking which will be published in the **Federal Register**. The rule, when finalized, will implement section 616(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). That section of the Dodd-Frank Act requires the appropriate Federal banking agencies to

jointly issue final rules that ensure that parent companies of subsidiary insured depository institutions serve as a source of financial strength for such institutions.

Appraisal Independence (3064-AE95)

The FDIC plans to develop a joint notice of proposed rulemaking with the OCC, FRB, FHFA, CFPB, and NCUA to implement section 129E of the Truth in Lending Act, which was enacted as section 1472 of the Dodd-Frank Act. Section 129E establishes that real estate appraisals used to support creditors' underwriting decisions should be based on the appraiser's independent professional judgment. The rule also seeks to ensure that appraisers receive customary and reasonable payments for their services.

Resolution Plans Required for Certain Insured Depository Institutions (3064-AF05)

The FDIC is issuing a notice of proposed rulemaking to solicit comment on whether and, if so, how to further tailor or improve its rule requiring certain insured depository institutions to submit resolution plans.

Annual Audit and Reporting Required for Insured Depository Institutions With \$500 Million or More in Total Consolidated Assets (3064-AF39)

The FDIC is seeking comment on a proposed rule to revise 12 CFR part 363 which implements section 36 of the Federal Deposit Insurance Act. Part 363 requires annual independent audits and reporting requirements for insured depository institutions with total consolidated assets of \$500 million or more.

Margin and Capital Requirements for Covered Swap Entities (3064-AF55)

The OCC, FRB, FDIC, FCA, and FHFA (each an Agency and, collectively, the Agencies) adopted and invited comment on an interim final rule amending the Agencies' regulations that require swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants under the Agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (non-cleared swaps) (Swap Margin Rule). Under the Swap Margin Rule, as amended, initial margin requirements will take effect under a phased compliance schedule spanning from 2016 through 2020, and in a **Federal Register** notice published, the Agencies have extended the phase-in

period to 2021. Due to the COVID-19 pandemic, the Agencies are extending by one year the Phases 5 and 6 implementation deadlines for initial margin requirements from September 1, 2020, to September 1, 2021 (for phase 5) and from September 1, 2021, to September 1, 2022 (for phase 6). The Agencies' objective is to give covered swap entities additional time to meet their initial margin requirements under the rule so as not to hamper any efforts underway to address exigent circumstances caused by COVID-19. The Agencies intend to adopt as final the interim final rule.

True Lender Doctrine (3064-AF60)

The FDIC seeks comment on a proposed rule defining when a state bank is the true lender in the context of a lending partnership between a bank and a non-bank entity.

Federal Deposit Insurance Corporation.

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